

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND INDUSTRY**

Call to Order: By **CHAIRMAN JOHN HERTEL**, on February 10, 1999 at 9:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)

Members Excused: Sen. Dale Berry (R)
Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 373, 2/5/1999
SB 409, 2/8/1999
SB 410, 2/8/1999
Executive Action: None

{Tape : 1; Side : A; Approx. Time Counter : 0}

HEARING ON SB 410

Sponsor: SENATOR BOB KEENAN, SD 38, BIG FORK

Proponents: Blu Funk, Show Thyme Restaurant, Big Fork
Brad Griffin, MT Restaurant Assoc.
Ron Morris, The River Grille, Helena

Rich Miller, Miller's Crossing
Toby DeWolf, Bert & Ernies
Mark Staples, MT Tavern Assoc.

Informational Testimony: Jeff Bryson, Bureau Chief, Gambling Control, Dept. of Justice

Opponents: Paul Cartwright, citizen
Salvatore Ippolito, Italian Restaurant

Opening Statement by Sponsor:

SENATOR BOB KEENAN, SD 38, BIG FORK. I am passing out a packet and would like to walk through these exhibits. **SB 410** has been an issue that has been brought to my attention many times over the past four years. In **EXHIBIT (bus33a01)** you can see back in 1995 there is a restaurant that has allowed patrons to bring in alcoholic beverages of their own. I asked the Department of Justice what the deal was. The key to this letter is ambiguity, some vagueness of the law, and a number of amateurs that think they are on the Supreme Court and saying the law is unconstitutional. On the second page, last line of the letter sums up the letter: "Consequently, this may be an issue properly directed to the Flathead County Attorney." I talked with the county attorney, he was too busy and didn't think it was very important. Things have just disintegrated over the last three years with nothing being done about the situation.

Basically, the bill does two things. It clarifies 16-6-306 that bottle clubs are prohibited and it charges state-wide enforcement. Looking at the second handout **EXHIBIT (bus33a02)** in Dec. 19, 1997, this problem arose in Hamilton (and explains the situation). The next article appeared on March 22, 1998

EXHIBIT (bus33a03) and came out of Kalispell. Essentially it said that the City Attorney, Glen Neier, announced that the clubs must cease and desist or be prosecuted. He was then asked by others to use his discretion and exercise his considerable prosecutorial authority in other words, don't do anything. Eight months later, there is a dramatic shift from the city attorney ready to enforce the law, to now there was no law prohibiting the restaurant from having customers bring their own bottles **EXHIBIT (bus33a04)**.

Let's get real. Can you bring a bottle of wine or a six pack into a movie theater? Obviously there are local politics back home that are causing all this confusion. If there is no law regulating the bottle clubs, how can the other laws be enforced concerning the closing at 2:00 a.m., or the serving of liquor to 17 year olds? Is there sensitivity in these restaurants to the laws as we live by? There would be no loss of license or closing of the business. There is a list **EXHIBIT (bus33a05)** given to me

this morning that shows the number of cabaret licenses, their quotas, the licenses issued, applications pending and licenses available. There was lots of controversy, lots of compromise and we thought we had the issue resolved in the last legislative session. There are a lot of cabaret licenses available. Why aren't these clubs and restaurants getting these licenses? In Kalispell, unfortunately, there is not one available. Kalispell is only one of one or two that have used up their available licenses. Senator Mike Taylor has a bill that would open up the cabaret law and allow some places to have more licenses.

Our culture has changed and there is a little more callousness toward drinking. There has been a softening on liquor laws. The state still feels a lot of obligation to control the various levels of liquor transactions. In the beginning of Title 16-1-101 (**SEN. KEENAN** reads from the MCA). We have pretty stiff law, but at the local level we have political pressure so that city attorneys and country attorneys are in just a "hands off" position. I would remind you of the liability exposure when a city attorney knows of a bottle club operating and chooses to do nothing and someone from that bottle club who has been served alcohol drinks too much, go out and hurt someone. Where is the liability? The deep pockets will be in the city government. (He then reads Section 16-1-103 and 16-1-106 which is what he is amending.) (Another statute 16-1-104 is read.) Despite the fact that our culture is changing and we are a little more relaxed about liquor consumption, etc. I hope I have been able to spell out this issue for you. Thank you.

{Tape : 1; Side : A; Approx. Time Counter : 12.6}

Proponents' Testimony:

Blu Funk, Show Thyme Restaurant, Big Fork. My wife and I have put a lot of hard work in our place. We have no gambling and we are dedicated to our food. We have an all beverage license that we paid for over time. A bottle club opened up down the street in 1995. They eventually got a license through our pressure. This law needs to be clear. I am one of the restaurant owners that asked **SENATOR KEENAN** to carry this bill.

Brad Griffin, MT Restaurant Assoc. We had our board meeting yesterday and we are in full support of the bill. The word fairness gets bandied about quite often. It gets used and abused but this is a fairness issue. Many restaurants have put up their money to get the cabaret license or all beverage license. We support the bill.

Ron Morris, River Grille, Helena. We support the bill. We saved for many years to buy the facility and license. We want to see it be a level playing field.

Rich Miller, Miller's Crossing. My sister, brother and I own and operate it. We worked hard to get our license. We train our help on serving issues and liquor issues. Others should be licensed to sell liquor here in Montana.

Toby DeWolf, Bert & Ernies, Helena. I am in full support of this bill. We have all paid our dues and the law should be very clear to all that a license is necessary to sell and have liquor in their place of business. There are liability issues here also. So it should be a level playing field for all.

Mark Staples, MT Tavern Assoc. SEN. KEENAN has made many of the points that I had planned to touch on so I will not be repetitive. There are only three places in the state where the city authorities are not upholding the present law. They are Butte, Kalispell and Helena. We have been working with Senator Taylor on a bill that would increase the number of cabaret licenses. Kalispell is one place that has run out. There are other places of under 20,000 that may need more licenses in their quota. In Butte there is no excuse. Not one cabaret license has been sold there. And there are several bottle clubs. In Helena there are still cabaret licenses available. In Cascade County, the attorney has sent a letter to all and said there is no excuse not to get a cabaret licenses and he will enforce it. Valley County is enforcing the current bill. But some say it is ambiguous, so let's get it clarified so there are no questions.

Informational Testimony: Jeff Bryson, Bureau Chief, Gambling Control, Department of Justice. The Department does have a slight correction that they would like to make to the bill. On page 2, line 1, we suggest that on line 1, strike "chief legal officer" and insert "the city attorney". On line 2, do the same thing.

{Tape : 1; Side : A; Approx. Time Counter : 23}

Opponents' Testimony:

Paul Cartwright, citizen. There is a problem that this bill misses an opportunity to help rather than hurt small business. There are been bottle clubs and nothing bad has happened. Usually things are low keyed and I don't think they have hurt other restaurants that much. It seems that restaurants are trying to get the cabaret licenses. I know that in Kalispell

they do not have enough licenses. What about small restaurants that are opened a couple of nights a week. What about bed and breakfasts places. It seems to me that regulated bottle clubs would be good and I would like to propose an amendment and establish a bottle club license. This would be a better way to solve the problem.

Salvatore Ippolito, Italian Restaurant, Helena. He gave his testimony and handed in the written copy **EXHIBIT (bus33a06)**.

{Tape : 1; Side : A; Approx. Time Counter : 35.7}

Questions from Committee Members and Responses:

SEN. BEA MCCARTHY asked **Mark Staples** about the bed and breakfasts (B & B's). B & B's are usually restricted to very small clientele. Sometimes they serve a catered party and serve liquor. **Mr. Staples** said this bill addresses the public restaurants. B & B's are a separate situation because that is private. You don't just drop in for dinner at a B & B. I don't think the intent of this bill is to deal with B & B's. When a group goes to a place and bring their own food and beer or wine, that is not a public dining place like at a wedding. This bill is not meant for the private place in the country that caters to private parties. It is meant for public places that are open to the public. This language could be placed in the bill.

SEN. MCCARTHY asked **SEN. KEENAN** if he would oppose an amendment of that kind. **SEN. KEENAN** said that would not be a problem and he would work with the proper people to take care of this issue.

SEN. MIKE SPRAGUE asked **Jeff Bryson** if the B & B's are a problem in the bill. Can someone go take in their own bottle of wine or beer. **Mr. Bryson** said that the definition of a public place is where local ordinances are in effect and not in private places.

SEN. GLENN ROUSH asked **Mr. Bryson** about dude ranches in Montana. Would this bill affect those places? **Mr. Bryson** said that the Department of Justice does not regulate the liquor laws. Their function is to enforce the law.

{Tape : 1; Side : B; Approx. Time Counter : 0}

Lee Berlocher, Department of Revenue answered that currently the policy is we regulate licensed entities. They don't have any precedent in regard to that. They would have to do some evaluation and see if there are differences and what the determining factors would be.

SEN. COCCHIARELLA asked **SEN. KEENAN** if the hassle and length of time to get a license might contribute to these bottle clubs not getting a license. **SEN. KEENAN** said that may be one reason and they have to go through the federal process as well. Those who have licenses go through that process--it has to be done. If the state process is too time consuming and involved, that could be looked at. As far as the expenses go, there are banks for loans. A business must plan and put together the plan as well as the finances.

SEN. JOHN HERTEL asked **Mark Staples** if there is a big demand for cabaret licenses and is that demand being met? **Mr. Staples** said no. There are isolated situations. Kalispell is one. But a bill is coming through that will address that problem. There are licenses available in almost all cities. In comparison with an all beverage license, getting a cabaret license is like a walk in the park. He doesn't approve of those places that just don't want to take the responsibility and the work that goes with serving liquor. All are either regulated or not.

SEN. HERTEL asked about the reluctance of the county attorneys not supporting the law that is already established. **Mr. Staples** said there really isn't a reluctance. He thinks it is political.

Closing by Sponsor:

SENATOR KEENAN closed. We have levels of sovereignty. There is the U.S., Montana, Indian Reservations and then there is Butte. Thank you for a good hearing.

{Tape : 1; Side : B; Approx. Time Counter : 7.9}

HEARING ON SB 409

Sponsor: **SENATOR JON ELLINGSON, SD 33, MISSOULA**

Proponents: **Bob Anderson, Public Service Commissioner**
Jeff Barber, MT Environmental Information Center
Mary Hamilton, Solar Plexus, Missoula
Lee Tavenner, Solar Plexus, Missoula
Debbie Smith, Natural Resources Defense Council and
Renewable Northwest Project

Opponents: **Glenn Wheeler, Distribution Ops, Montana Power Co.**
Gary Wiens, MT Electric Cooperatives

Opening Statement by Sponsor:

SENATOR JON ELLINGSON, SD 33, MISSOULA. **SENATE BILL 409** is going to introduce a new concept in the utility and electrical generation field. This is a net metering bill. It provides a person who has a power generating facility in their home like a solar panel or wind generator, a credit for the amount of power returned to the grid. This bill would implement this concept. A number of residential customers are installing these renewable energy systems in their homes. We need to develop a standardized and simple protocol for connecting their systems to the electricity grid. It needs to ensure both safety and quality. Next, many customers are not at home using the electricity which they generate during the day when their systems are producing the most power. Net metering allows them to receive the full value of the electricity that they have produced. Last, net metering provides a simple and inexpensive and easily administered mechanism for encouraging the use of renewable energy. Net metering has been adopted in 23 states. (He then explains the bill.)

{Tape : 1; Side : B; Approx. Time Counter : 14.4}

Proponents' Testimony:

Bob Anderson, Public Service Commissioner. The Commission asked me to come and support **SB 409** and especially to support the concept of net metering. Net metering has a good future and gives a choice to the customer. One of the major driving forces behind deregulation of electricity is technology. Here is one of the best explanations for net metering. The trend in the industry is away from large central station generators located in remote locations, generates a lot of electricity and transmits it over high voltage wires to consumers. Technology is enabling new generators to be small and located closer to the customer. Net metering is an important part of this change. It allows customers to become their own generators. It can enhance the environment by allowing green or environmentally friendly resources to be hooked up with fewer barriers to entry into the system. It is technically feasible and is being done in other states. In most of those states they still have vertically integrated utilities and have no other competition yet.

Looking at the bill, we see some problems. One is that there needs to be an obligation described for the distribution of the power. The wires company needs to be obliged to hook up a net metering device. The bill deals with the supplier but it needs to deal with the distribution or the wires company. With respect to the requirements on a supplier, we wonder if the bill ought to

be as prescriptive as it is especially in such a competitive world. Suppliers, customers, etc. should be more free to engage in contracts or arrangements of their own choosing. It may be appropriate as this concept develops to charge the PSC with some of the pricing and arrangement issues that would be in the statute.

Another is the process of metering itself may very well become a competitive services in the new electricity world. That issue was raised in the transition plan for Montana Power Co. We didn't have enough testimony to reach closure on that issue. In the next year or so, the Commissioner will engage in a notice of inquiry to examine whether or not or how metering should become a competitive service instead of being a monopoly service. We will look at net metering, its merits and how it ought to play out. We don't have specific amendments but we are willing to work the sponsor and others to have a good bill.

Jeff Barber, MT Environmental Information Center. I have three statements of people who were unable to be here in support of this bill today **EXHIBIT (bus33a07)**, **EXHIBIT (bus33a08)**, **EXHIBIT (bus33a09)**. Net metering is a concept that our organization supports completely. It just allows the meter to spin backwards. If you generate more power than you use and give it back to the grid, your meter spins backwards and therefore you have less power used when they read your meter at the end of the month. So technically, it works as a credit. It could show up as a negative amount on your bill. You won't receive a check for that but the credit will be carried over month to month until the end of the year. If you haven't used it by the end of the year, it is wiped off the books. This keeps the administrative costs down. It will encourage development of renewable energy in this state. It lowers some of the financial barriers to people who want to put solar panels in their homes or a wind turbine at their farms. It encourages diversification of our energy supply. There would be less reliance on the grid. Some of the concerns is safety. Section 7 deals with this subject and requires people to use this national safety code. If people abide by these safety codes, then safety will not be an issue. The credit that is given is essentially at the retail costs. Some think this is too high. In effect what that amounts to is, for a residential solar system, people might save \$5 to \$15 a month on their bill. For a sizeable wind turbine it might amount to \$25 to \$70 a month. We feel that is large enough to encourage people to invest in this type of technology but not so large that it would be burdensome to the power suppliers. Ninety-nine point nine percent of the meters in the country today can spin both ways, so there is not a need for many new meters. I hope you will look favorably on this bill.

{Tape : 1; Side : B; Approx. Time Counter : 23.8}

Mary Hamilton, Renewable Energy Products, Missoula. She gave her testimony and handed in the written copy **EXHIBIT(bus33a10)**. She handed out a sheet on questions and answer on net metering **EXHIBIT(bus33a11)** and a summary of state "net metering" programs **EXHIBIT(bus33a12)**.

Lee Tavenner, Renewable Energy Products, Missoula. He gave his testimony and handed in the written copy **EXHIBIT(bus33a13)**.

Debbie Smith, Attorney, Natural Resources Defense Council and Renewable Northwest Project. Both groups are strong supporters of the net metering concept. You don't need to have a restructured utility environment in order to have net metering. But states are approaching the concept on different scales. This bill allows potential rate reductions for small customers. We have so much wind here in Montana there is an enormous economic development potential. We can benefit by this fact. I am told by my group that there are four jobs, high skilled labor jobs, at a wind plant--everyone at a fossil fuel facility. That is a good deal for the state. This is a fine bill but I do have one minor amendment **EXHIBIT(bus33a14)**. The definition of net meterings need to be changed to reflect that there is also transmission and distribution savings that are earned when you install your own generation source. This is a friendly amendment to the bill. It gets at an issue that Commissioner Anderson represented. There are two ways that I suggest you can do it. One way is simply to add certain language to the existing definition and strike one word. The other way is the more elegant way is to rewrite the definition as shown.

{Tape : 1; Side : B; Approx. Time Counter : 37.9}

Opponents' Testimony:

Glenn Wheeler, Distribution Operations, Montana Power Co. After listening to the bill and the proponents, in no way am I testifying against renewable energy, against all the benefits of it and all the opportunities of it. My comments will be directed toward the way the bill is constructed. There were some concerns regarding safety and to what the opponents of this bill might say. When co-generators are in parallel with the system and the system goes down or our electric linemen are working on that system, and de-energized from the utility standpoint. It can be back-fed and re-energized from the co-generation facilities. The lineman working out there may think he has a de-energized line when in fact it is back-fed and energized from the other side creating a hazard. This is addressed in the bill from the

standpoint that all applicable national electric safety codes, national electric codes, etc. with rule and regulations would prevent back-feed. These rules and regulations are of a minimum type of standard. The only safety issue that I would have to present to this bill, and would not be insurmountable, would be on page 7, New Section 5, Subsection 3, that a utility may not require a customer generator net metering system that meets the requirement of this section to comply with additional safety or performance standards". Those are minimum standards. There are standards in addition to those and there should be no reason that a customer generator would be excluded from additional safety performance standards that all other customers in our system comply with. We do have a concern as we get more and more generators on line and we feel that it is even more important that all of the protective equipment operate properly. If it doesn't, then that hazard exists.

I represent the distribution part of the company and I would like to expand a bit on what Bob Anderson might have been pertaining to as far as the formula not necessarily fitting the wires and pipes distribution portion of the business. With this net metering concept, with our coming in through the meter, it registers positive; with like amount of power going back through the meter, it runs the meter backward and registers a negative. Conceptually, if the customer put together the same kind of generation he would net out zero. In the kilowatt hour charge that is presented at the meter, there is a service charge which is included in the bill which is approximately \$4.50 to \$4.95 a month. This includes such things as meter reading, billing, accounting, metering, etc. The distribution system and the transmission system and the infrastructure that creates that system, all those costs are included in the kilowatt hour charge that is presented to that meter. In essence, we in the distribution company would be in the position of providing transmission, distribution, substation, etc. for essentially no revenue. An example would be if there was an infrastructure in place like the highway system that needs to be supported and a truck drove from Helena to Missoula carrying a commodity and was charged a cost per mile but when he returns back to Helena, he subtracts the cost for every mile back and having gone both ways ends up paying nothing. There has to be a concept that allows for that distribution system that provides the wires and pipes that provides a revenue for the support of that system. This bill does not allow for appropriate revenues for the distribution company.

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On behalf of the suppliers, we at MPC are suppliers. We will probably not be a supplier after the sale of the generation

portion. This bill assumes that all generation has the same value. But kilowatt hours are different in that the time they are generated they have different values. If a hydro-cogenerator generates power in the springtime when the water flows are high, the northwest is awash with hydro-power of small value. On the other hand, to use that power on the other side of the take back of the power when it is 30 degrees below, the power is very high-priced. So there isn't a 1-on-1 exchange just because you have a kilowatt hour going in at some high-priced time and a kilowatt hour coming at some lower-priced time. In addition, they have to buy reserve capacities in order to supply the needs of that house. In the new structuring to people's choice, requires power suppliers to allow customers to come on line and give a schedule to the distribution company which allows them to serve these. This amounts to unmetered power going into the system that makes it very difficult to calculate our losses, which is a requirement as we look at what we're trying to do. I don't think these things are impossible to overcome if that's the essence of what's to be done. This bill establishes a very high price for renewable energy -- the cost of the power generated by the renewable + the cost of transmission + the cost of generation + the cost of regulated assets + the universal system benefit charge provides the revenue the renewable generator is receiving. There is a tariff for small generation that parallels with MPC's system, the social benefits are very complex and the appropriate remuneration for renewables ought to be part of the Commission's jurisdiction.

Gary Wiens, Montana Electric Cooperatives Association. We respect and appreciate the intent of this legislation. Some of our co-ops are already involved in renewable resource projects such as solar and wind, i.e. Glacier Electric Cooperative, Cut Bank, has an agreement with Blackfeet Tribal College and credits the College at the wholesale power rate for power produced by the College's wind generator. The bottom line for us is the bill forces co-operatives to buy power that we may neither want nor need, and to buy it at increased costs with inerrant scheduling problems created in dealing with excess power. It requires us to credit power at retail prices; for the typical co-operative, it means we would have to credit at prices approximately double of what the cooperatives were paying for power at the wholesale rate. Also, by imposing a mandate, **SB 409** runs contrary to the co-op principle of local control allowing customer-owned co-ops to make decisions about power purchases. Renewable resources are already addressed under **SB 390**; that bill encourages the development of renewable resources and allows utilities to receive credit for cost-effective renewable resource projects -- these credits are applied against the universal system's benefit charge; therefore, **SB 390** is a voluntary approach to renewable

resources with considerable credit incentives. In summary, we support renewable resources but we do not believe the mandatory approach is the answer.

Questions from Committee Members and Responses:

SEN. VICKI COCCHIARELLA asked about the amendment and the concerned distribution and asked if that was something the sponsor was willing to amend. **SEN. JON ELLINGSON** said they were willing to work with everyone in order to address the concerns, particularly those of safety, the issue of getting a credit for a rate which is based upon power generation and distribution plus other costs.

SEN. COCCHIARELLA referred to written testimony by **Russ Wahl** and asked why 50 kilowatts was chosen. **SEN. ELLINGSON** said this bill was modeled after Washington so this must be what was agreeable to that state.

SEN. COCCHIARELLA said the amounts varied and wondered why. **Mary Hamilton** said they felt 50 was reasonable for residents to produce but not go over, i.e. throw off the power so the needs couldn't be calculated at different times of the year.

SEN. COCCHIARELLA asked how many kilowatts an average home used in a month. **Gary Willis** said the average home user needed about 9,000 kilowatt hours per month and costs about six cents; therefore, it's about \$540 per month, or about \$45-\$50 per month. The thinking behind the 50 kilowatts was big corporations coming in and they had to pay premium dollar for -- if it was a policy to develop this resource and pay a premium, don't go to the corporate side; rather, keep it at the smaller side. The rate for 50 kilowatt hours is about \$3 per hour.

{Tape : 2; Side : A; Approx. Time Counter : 9.9}

SEN. BEA MCCARTHY asked if the fee MPC was worried about could be negotiated at the time of customer hook-up. **SEN. ELLINGSON** referred to Page 6, Line 2, and said there was a fee established by the Commission -- he thought that addressed the issue; however, if it didn't he could think of some alternatives.

SEN. MCCARTHY asked **Glenn Wheeler** if that took care of his concern. He said the monthly fee talked about was what he referred to as a service charge which went to all customers. It covered the cost of metering, accounting, billings, meter reading, etc. The cost of the distribution system is not included in that fee; rather, it is included as part of the kilowatt hour charge that comes across. In conjunction with what

can be done, the distribution charge be removed from the kilowatt hour charge -- customers would pay for a distribution fee very similar to what is seen in the telephone company. If we readjusted our rate schedule, which would be entirely in the hands of the Public Service Commission, we would be willing to talk about the cost of the distribution company on an access basis separated from the kilowatt hours costs.

SEN. MCCARTHY asked for input from **Bob Anderson**, who said all the issues raised by **Mr. Wheeler** had to do with how the distribution company would be regulated in the future. They were legitimate points but they shouldn't be addressed in the law. The distribution company will be regulated as a monopoly going forward, just as MPC has always been regulated, by the Public Service Commission.

SEN. MCCARTHY asked him if he was comfortable with the charges. **Bob Anderson** said his preference was they'd be removed because it was a regulatory matter. If it was put into law, it may not be right. **SEN. MCCARTHY** asked if he preferred Page 6, (2), be deleted and **Mr. Anderson** affirmed.

SEN. MCCARTHY asked for comment from **Lee Tavenner**. He said they weren't trying to get into the complexity of the pricing situation. Past problems seemed to be details that weren't applied to each retail customer or individual producer.

SEN. JOHN HERTEL said his area had a small hydroelectric plant that was working and he wondered what **SB 409** would do to that project. **Gary Willis** said he would get a rate and sell it back to MPC (the rate has been established with the Public Service Commission). There is an established tariff and he receives that in the form of a check from MPC. He would have the option, if **SB 409** passed, to go for the net metering and use the electricity for his house.

{Tape : 2; Side : A; Approx. Time Counter : 18.1}

Closing by Sponsor:

SEN. JON ELLINGSON. This bill presents the ultimate consumer choice because of deregulation. I want to thank both the proponents and opponents and thank the opponents for being willing to work with us. I would invite them to get together with the proponents so we can make some appropriate amendments to satisfy the concerns.

Sponsor: SENATOR JON ELLINGSON, SD 33, MISSOULA

Proponents: Craig Sweet, MT Public Interest Research Group

Opponents: Brad Griffin, MT Retail Assoc.
Tempi Ruth, MT Bankers Assoc.
John McGreevey, ATM of Montana
Chris Gallus, MT Chamber of Commerce
Tom Ellis, President, Norwest Bank
Keith Colbo, MT Independent Bankers
Jim Kennedy, Wellington Technology

Opening Statement by Sponsor:

SENATOR JON ELLINGSON, SD 33, MISSOULA. This bill is a good, simple consumer bill which provides protection to a user of an automated teller machine (ATM) against being double-charged on a transaction. Page 2, Lines 12-13, prohibits the owner of an ATM machine from imposing a surcharge for the use of the ATM. The fee structure for ATM machines is fairly complex. The bank owner typically: (1) Collects the fee from the ATM network of both owned and non-owned machines from its customers every time they use an ATM owned by another bank; (2) Collects a yearly charge for using ATM. Not only can a bank collect a fee from its customers, it can also collect from non-customers -- every time a non-customer uses an ATM a processing fee is collected. If this bill passes, none of those fees would be touched; however, **SB 373** prohibits the collection of a surcharge (which was about \$1.50 per transaction) against the non-customer. This bill protects the consumer, who uses the ATM that isn't at one of his own banks, from having to pay two fees -- one that goes automatically to his bank and the other that goes to the owner of the ATM, totaling \$3.00 per transaction.

The question might be why shouldn't we allow the banks to charge what they wish or why should government be involved -- let the free market regulate. Unfortunately, the free market doesn't work very well with the charges that some of these banks which are imposing, i.e. there doesn't seem to be very much competition in their ATM charges. It seems that the bigger the banks, the more likely they will double-charge consumers. If the market doesn't work, it's up to the legislature to introduce some modest regulations for the benefit of the consumers who are suffering because the market doesn't work.

{Tape : 2; Side : A; Approx. Time Counter : 26.7}

Proponents' Testimony:

Craig Sweet, Director, Montana Public Interest Research Group (MontPIRG). He distributed copies of **EXHIBIT (bus33a15)** and said the bill was very simple; in fact, it was just one added line. What's happening with the surcharge is Montana consumers are paying twice for one transaction. There are rules and regulations in place to guide the market and one of those is the surcharge fee has to be made quite clear. Typically, this information isn't on the outside of the machine, but on the screen, and often the user is quite deep into the transaction before the screen appears. The survey reveals banking fees of all kinds will be rising; in fact, already there is an inter-charge fee. Another aspect of banking fees and the ATM surcharge is what is done to competition. In urban areas in Montana, banks are bigger and have lots of ATM machines which are quite convenient, i.e. there is an incentive for a consumer to switch from a smaller bank to a larger bank for the convenience and once people start to switch to larger banks, smaller banks could suffer because of loss of customers. In many communities, both in Montana around the country, small banks have joined together to treat each other's customers as their own, i.e. not charge for ATM usage. There have been attempts for national legislation to do away with ATM surcharges -- hatred of the surcharge runs deep and crosses political lines. We at MontPIRG don't feel consumers should be charged twice for one transaction. Throughout this country, it's estimated consumers use ATM transactions 175 million times, but it's difficult to find out how many times they're used in Montana.

Opponents' Testimony:

Brad Griffin, Montana Retail Association. I'm opposing the bill because half of the ATM machines are held in retail locations for the convenience of the customer. The retailer wants the customer to consider its store as the hub and one-stop shopping. I thought there was money to be made in ATM machines so I invested in one; however, after six months I got out because they're not a money-maker. We urge you to oppose **SB 373**.

Tempi Ruth, Montana Bankers Association. She read her written testimony **EXHIBIT (bus33a16)**.

{Tape : 2; Side : A; Approx. Time Counter : 38.9}

John McGreevey, ATM of Montana. ATM of Montana places ATM machines in locations where there is a proven demand for them, i.e. in places that are convenient for consumers. This bill would have us provide that service for free, which means we would have to remove the ATM machines. These machines are in food markets, grocery stores, convenience stores, high-traffic

restaurants, etc. and are making life a little less hectic for people. Do we really want to make it difficult for tourists to access their money in Montana? What about the people of rural Montana -- do we want to send a message that we'd like to remove a service that was convenient for them and saved them time? **SEN. ELLINGSON** mentioned a fee of \$1.50; however, many machines charge \$1.00. I will address **Mr. Sweet's** comment, "You want the money so you can get on with what you're doing," by saying it is possible to transfer money or check your balance without getting charged. The charge comes when the terminal dispenses actual money; however, remember it's a convenience and people aren't being forced to use it.

Chris Gallus, Montana Chamber of Commerce. We believe this bill is anti-business as well as anti-consumer because using an ATM is a matter of choice. We believe this legislation shouldn't pass because the convenience it provides is important.

Tom Ellis, Norwest Banks. His testimony was an explanation of **EXHIBIT (bus33a17)**, which is self-explanatory.

{Tape : 2; Side : B; Approx. Time Counter : 4.9}

This is very similar to PC banking where you can access your account from home through the Internet; however, if you access your account from another machine or ATM and use a network that they pay for, you should be willing to pay for that convenience. The original intention of the ATM has changed -- you can now access money anywhere in the world where there's an ATM and if that's what you're doing, you should be willing to pay for that. Will surcharges cause ATM machines to be eliminated or reduced? Norwest has 106 ATM machines in the market and we've identified 26 that we'll keep if **SB 373** passes. Also, we're now selling postage stamps, lift tickets and sometimes loan applications through ATM machines -- will you now tell us how much we can charge? When you go to the convenience store, you don't expect the proprietor to sell you the gas or milk at cost; why should you expect banks to provide money at cost and to absorb all the costs associated with delivering your money from a different bank to you through our equipment. I would encourage you to think about what this bill will do -- if it passes, we will still have ATM machines in the larger areas, though not as many, but not in the smaller areas. I would encourage you to oppose this bill.

Keith Colbo, Montana Independent Bankers and Community Bankers of Montana. The Community Bankers operate the cash card network, or 500 machines in Montana and Wyoming which are owned by banks and other financial institutions. Many of these machines are in

rural Montana and are owned by smaller financial institutions. The ATM market is becoming more and more saturated -- the good locations have been filled -- and right now our ATM network has no room for growth. Several years ago there was strong growth and that was because of the ability to impose a surcharge, i.e. the surcharge was a means to make many of the machines viable. We have done many things to the cash card network, including improvements to the technology, i.e. have tried to grow the network to make it more convenient and accessible. The economics in the ATM market is customer choice; therefore, if **SB 373** passes, there will be fewer ATM machines because of the removal of the surcharge, which would be a setback to the Montana consumer. For those reasons, we oppose the bill.

Jim Kennedy, Wellington Technology, Billings. Our data-processing company provides the drives for the 500 machines throughout Montana and United States. If this bill passes, this company would have to go to another state and our seven employees, who have high-paying jobs, would have to relocate also. The cost of one of these machines ranges from \$8,000-\$50,000 so the investment is significant; also, there are charges for security, telephone lines, etc. We would like to go on record of opposing this bill.

Questions from Committee Members and Responses: None

{Tape : 2; Side : B; Approx. Time Counter : 11.2}

Closing by Sponsor:

SEN. JON ELLINGSON. Thanks to everyone for their testimony -- it's always interesting to hear other points of view. If there were truly a competitive market providing this service, we would see some price competition in the surcharges; however, the contrary is true -- two of the largest service providers have eliminated their prohibition against surcharges. As for no states adopting this, that's not true because Connecticut, Iowa and Massachusetts have adopted it, i.e. this isn't an entirely foreign concept. Without this bill, if you use an ATM that isn't owned by your bank, you will pay two fees, and the rate could be 6% of \$50, which is an average transaction. Again, if the competitive market doesn't protect the consumers, the legislature has to step in. I urge you to accept this bill.

ADJOURNMENT

Adjournment: 11:50 A.M.

SEN. JOHN HERTEL, Chairman

MARY GAY WELLS, Secretary

JH/MGW

EXHIBIT (bus33aad)